

## **Chapter 78.**

### **Burial Associations.**

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#### **23-78-101. Definitions.**

- (a) As used in this chapter, unless the context otherwise requires, "burial association" means:
  - (1) Any person, firm, association, copartnership, corporation, company, or other organization which, from and after February 18, 1953, undertakes for consideration paid by or on behalf of its members to defray all or a part of the funeral expenses of the members; which furnishes or undertakes to furnish merchandise, supplies, and services or any other character of burial benefits to the members; or which issues a certificate which provides for the payment of funeral benefits to the members in services, merchandise, or supplies, including the services of funeral directors and embalmers; and
  - (2) Every person, firm, association, copartnership, corporation, or company which, prior to February 18, 1953, has undertaken for a consideration to pay money to its contributors for the purposes of defraying all or part of the funeral expenses of a deceased person; which has furnished or has undertaken to furnish supplies and

services or any other character of burial benefits to the contributing person or to his or her beneficiaries or members of his or her family; or which has issued any form of contract or certificate which, under its terms, provides for the payment of funeral benefits in money, services, or supplies, including the services of undertakers or embalmers.

- (b) Whenever used in this chapter, the word "board" means Burial Association Board, and the word "association" means burial association.

#### **23-78-102. Applicability.**

- (a) All burial associations organized or operating in the State of Arkansas as of February 18, 1953, shall be deemed in all respects to be organized or operating exclusively under the provisions of this chapter, and to have authority from the Burial Association Board to engage in their business. They shall be subject to the supervision, authority, and control of the board and subject to all the provisions of this chapter.
- (b) All burial associations organized in this state from and after February 18, 1953, shall organize exclusively under the provisions of this chapter and shall be subject to the authority, control, and supervision of the board and to all of the provisions of this chapter.

#### **23-78-103. Chapter exclusive authority.**

- (a) This chapter shall be deemed and held exclusive authority for the organization and operation of burial associations within this state, and the associations shall not be subject to any other laws respecting insurance companies of any class, kind, or character.
- (b) However, this chapter shall not affect the validity of any membership certificate of any burial association issued and outstanding under the provisions of any prior law.

#### **23-78-104. Penalty.**

- (a) It shall be unlawful for any person, firm, association, copartnership, corporation, company, or other organization to organize, operate, or in any way solicit members for a burial association, or for participation in any plan, scheme, or device similar to burial associations, except in the manner provided by this chapter and the rules and regulations promulgated by the Burial Association Board.
- (b) Any person, firm, association, copartnership, corporation, company, or other organization violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than two hundred fifty dollars (\$250) or imprisoned not more than six (6) months, or both.

#### **23-78-105. Burial Association Board - Creation - Members.**

- (a) There is created a Burial Association Board consisting of the following members who shall be appointed by the Governor subject to confirmation by the Senate:
  - (1) One (1) member from each congressional district;
  - (2) Three (3) at-large members;
  - (3) One (1) consumer representative appointed from the state at large;

- (4) One (1) representative of the elderly appointed from the state at large; and
  - (5) Any other members who, from time to time, may be added by statute.
- (b)(1)(A) The members of the board shall be:
- (i) Residents of the State of Arkansas;
  - (ii) At least twenty-one (21) years of age; and
  - (iii) Of good moral character.
- (B) The representative of the elderly shall be sixty (60) years of age or older.
- (2)(A) Members other than the consumer representative and the representative of the elderly shall be engaged in or connected with the operation of a burial association for at least five (5) years.
- (B) The consumer representative and the representative of the elderly shall not be actively engaged in or retired from the business of operating a burial association.
- (3) The consumer representative position and the representative of the elderly position cannot be filled by the same person.
- (c)(1) Members other than the consumer representative and the representative of the elderly shall be appointed as follows:
- (A) During December of each year, the Arkansas Club of Burial Associations or its successor shall submit to the Governor a list containing the names of not fewer than two (2) qualified persons from each congressional district from which the current members' terms expire. However, at-large members may be from any congressional district, and no more than one (1) at-large member may be appointed from any one (1) congressional district;
  - (B) The Arkansas Club of Burial Associations shall also establish a system of rotating the at-large members to ensure equitable representation of congressional districts by the at-large members;
  - (C) After receipt of the list by the Governor, the Governor shall appoint to the board one (1) member from each congressional district from which the current member's term expires, plus members from the state at large, provided the at-large member's term also expires.
- (2) The requirement of appointment from a list submitted by the Arkansas Club of Burial Associations shall not be applicable to the consumer representative and the representative of the elderly.
- (d)(1) The term of office shall be for three (3) years, and no member shall be appointed to more than two (2) consecutive terms upon the board.
- (2) Each member shall hold office until a successor is appointed and qualified.
- (e)(1) Vacancies on the board shall be filled for the unexpired term thereof by appointment by the Governor.
- (2) Vacancies in positions other than those of the consumer representative and the representative of the elderly shall be filled from new lists submitted for the filling of the vacancies in the same manner provided for the appointment of those members to the board.
- (f) The Governor shall have the right to remove any member of the board for gross neglect or malfeasance after notice and hearing.

- (g) Before entering upon the duties of the office, the members of the board shall take the oath prescribed by the Constitution of the State of Arkansas for state officers and shall file it in the office of the Secretary of State. The Secretary of State shall thereupon issue to the person so appointed a certificate of the appointment.
- (h) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

**23-78-106. Burial Association Board - Proceedings.**

- (a)(1) The members of the Burial Association Board shall first meet within five (5) days subsequent to their appointment and elect one (1) of their members as chairman.
  - (2) The board shall meet thereafter at such times and at such places as may be prescribed by rules and regulations adopted by the board.
- (b) A simple majority of members of the board shall constitute a quorum, and the concurring votes of not less than a majority of the members present at any meeting shall be necessary to the decision of any question or issue or the authorization of any action. The consumer and elderly representatives shall be full voting members.

**23-78-107. Burial Association Board - Office and employees.**

- (a)(1) The Burial Association Board shall rent or otherwise acquire suitable quarters for an office and employ and fix the duties and the salaries of an executive secretary, two
  - (2) auditors, and such other clerical assistance as may be necessary to carry out the provisions of this chapter.
  - (2) The Executive Secretary of the Burial Association Board shall furnish to the board, at the expense of the board, bond with approved corporate surety in the amount of ten thousand dollars (\$10,000), conditioned for his faithful application of all funds coming into his hands by virtue of his office.
  - (3) The board may, if it deems advisable, require other employees to make a good and sufficient corporate bond to the board at the expense of the board in such amount as the board shall determine for the faithful performance of their duties.
- (b) Legal counsel shall be furnished by the office of the Attorney General for the State of Arkansas.
- (c) There is established for the board the maximum number of employees necessary for the maintenance and operation of the board and the maximum rates of salaries for the employees. The board is authorized to make payment for salaries, services, and other purposes from the funds received by the board.
- (d) The board is authorized to make reimbursement of the necessary and reasonable travel, board, and lodging expenses of the executive secretary and auditors incurred in the performance of their duties.

**23-78-108. Burial Association Board - Powers and duties.**

- (a) The Burial Association Board appointed pursuant to this chapter shall have full and complete authority to:
  - (1) Grant certificates of authority to burial associations;
  - (2) Revoke certificates of authority, charters, or other authority granted to burial

associations in this state;

- (3) Fix the minimum assessments or minimum membership dues for which burial associations may issue certificates for benefits in specified amounts;
  - (4) Supervise the affairs of all burial associations organized or operating in this state;
  - (5) Conduct hearings as provided in this chapter and collect, receive, hold, and expend annual license fees as provided in this chapter;
  - (6) Adopt and enforce such rules and regulations as it may deem necessary and expedient for the proper operation of the board and the carrying out of the objects and purposes of this chapter; and
  - (7) Establish actuarial rates and reserve requirements necessary to ensure the financial integrity of all burial associations.
- (b) The powers and authority set out in subsection (a) of this section shall not be in diminution or limitation of the powers and authority vested in the board by the various sections of this chapter, but the board shall possess all powers and authority, whether set forth in this section or not, to enable it to carry out the intent and purpose of this chapter.
- (c) The board shall have power to conduct hearings, subpoena witnesses and records, determine issues between different burial associations and between burial associations and their respective members, and render binding decisions, subject to appeal as provided in this chapter.

**23-78-109. Burial associations under authority, supervision, and control of board.**

All burial associations organized or operating in the State of Arkansas shall be under the authority, supervision, and control of the Burial Association Board.

**23-78-110. Certificate of authority.**

- (a) Applications for certificate of authority shall be on forms furnished by the Burial Association Board, and no burial association shall begin operation until the application shall have been approved and certificate of authority shall have been granted by the board.
- (b) The following documents and information shall be filed with the application:
  - (1) Surety bond payable to the board in the sum of five thousand dollars (\$5,000) executed by the applicant with surety approved by the board, conditioned upon the full compliance with this chapter;
  - (2) Consent to service of process upon the secretary of the applicant;
  - (3) Copy of proposed form of membership application, membership certificate, bylaws, and contracts for service, merchandise, supplies, and any other data requested by the board;
  - (4) References as to character, ability, and integrity of the organizers and of any funeral director or embalmer with whom the applicant proposes to contract.
- (c) If the board is satisfied that the applicant is qualified and meets the requirements of this chapter, it shall issue to the applicant a certificate of authority upon receipt of the sum of five hundred dollars (\$500).

### **23-78-111. Fees - Oath at payment.**

- (a)(1)(A) In order to meet the expense of supervision and of carrying out the other provisions of this chapter, the Burial Association Board shall have and is given the power and authority to set license fees for burial associations, subject to its jurisdiction as set forth in § 23-78-109.
  - (B) The board shall determine the amount of such fees based on a burial association's membership or reserves, or a combination thereof.
- (2) The board shall collect the annual license fee from each burial association that is operating and in good standing on January 1 of the year in which the license fee is payable.
- (b)(1) The fee shall be due and payable to the board not later than February 1 of each year, and the board, upon payment of the fee, shall issue to each burial association a license which shall entitle the association to do business in the State of Arkansas during the calendar year for which the license is issued.
- (2) If the license fee for any year shall not be paid within thirty (30) days from the date upon which it is due, the board may revoke and cancel the authorization of the delinquent burial association to transact business in the State of Arkansas.
- (c) It shall be the duty of every burial association to certify under oath at the time of the payment of the license fee the true and correct membership of the burial association on January 1 of the applicable year.
- (d) If any officer or agent of any burial association shall knowingly or willfully make any false statement with respect to the information required by this section to be furnished, he shall be guilty of a misdemeanor and shall upon conviction be fined not more than five hundred dollars (\$500) or imprisoned not more than six (6) months, or both.
- (e) The board shall have and is given the power and authority to reduce or increase, temporarily or permanently, the fees set forth in subsection (a) of this section if the board deems such action advisable.

### **23-78-112. Certificate for benefits - Issuance.**

- (a) No burial association shall issue a certificate for benefits for any member in excess of two thousand five hundred dollars (\$2,500), and no certificate shall provide for free service, merchandise, or supplies in addition to the amount of benefits set forth in the certificate.
- (b) If other than the contract funeral home performs the funeral service, the benefit shall be paid to that licensed funeral home on the basis of one hundred percent (100%) of the face amount of the certificate, in cash.

### **23-78-113. Agent's license required.**

- (a) Before any agent or representative shall or may represent any burial association in this state, he or she shall first apply to the Burial Association Board for a license.
- (b) The board shall have full power and authority to issue the license upon proof satisfactory to the board that the person is capable of soliciting burial association memberships and is of good moral character and recommended by the association in

behalf of which the membership solicitations are to be made. The board may reject the application of any person who does not meet the requirements herein set out.

- (c) The board, upon proof satisfactory to it that the licensed agent has violated any section of this chapter, may revoke the license.
- (d) The license fee shall be ten dollars (\$10.00), and the license must be renewed for each calendar year at the same fee.
- (e) It shall not be necessary that the president, vice-president, or the secretary-treasurer of any burial association obtain a license for soliciting memberships in any association of which the person is president, vice-president, or secretary-treasurer.
- (f) Membership certificates shall not be issued by a solicitor in the field, but all applications shall be forwarded to the office of the association, and the certificates shall be issued there and a record made of the issuance at the time the certificate is issued.

#### **23-78-114. False claim, promise, or representation of agent.**

Any burial association official, agent, or representative thereof who, for the purpose of inducing a member of one (1) association to change membership to another association, shall make any false claim, promise, or representation not authorized in the bylaws of the association represented by him shall be guilty of a misdemeanor and upon conviction shall be fined not more than two hundred fifty dollars (\$250) or imprisoned not more than one (1) year, or both.

**History.** Acts 1953, No. 91, § 18; A.S.A. 1947, § 66-1818.

#### **23-78-115. Rules and bylaws.**

All burial associations shall have and maintain rules and bylaws in such form and with such contents as shall be prescribed by the Burial Association Board.

#### **23-78-116. Membership dues and assessments.**

- (a) From and after February 18, 1953, no burial association organized or operating in this state shall issue any certificate providing benefits for a member for an assessment or membership dues less than the minimum assessment or minimum dues prescribed for the benefits by the Burial Association Board.
- (b) However, dues and assessments of the membership as of February 18, 1953, shall not be changed by the board.

#### **23-78-117. Books, records, accounts, and documents - Inspection and audit.**

- (a) The books, records, accounts, and documents of all burial associations organized or operating in this state shall at all times be open for inspection, examination, and audit by the Burial Association Board, its agents and employees.
- (b)(1) The board, through its agents and employees, shall make, from time to time, examinations of all burial associations.
- (2)(A) If, at the time of an examination or audit, the board determines that a burial association's books, records, accounts, and documents are insufficient, unavailable, or in no condition to be examined or audited, the board may collect a

fee not to exceed one thousand dollars (\$1,000) and recover costs incurred, including the following:

- (i) Round trip mileage from the board office to the burial association, at the travel rate then prevailing for other state employees; and
  - (ii) Per diem expenses at the travel rate then prevailing for other state employees.
- (B) Any fees or costs incurred shall not be payable from the burial association's mortuary fund.
- (c) The board shall be audited from time to time by the Legislative Joint Auditing Committee.

**23-78-118. Books - False entries prohibited.**

- (a) Any person or burial association official who knowingly makes or allows to be made any false entry on the books of the association with intent to deceive or defraud any member thereof, or with intent to conceal the true condition of the association from the Burial Association Board or its agents or employees or any auditor authorized to examine the books of the association under the supervision of the board, shall be guilty of a misdemeanor.
- (b) Upon conviction, the person shall be fined not more than two hundred fifty dollars (\$250) or imprisoned not more than one (1) year, or both.

**23-78-119. Records - Failure to maintain.**

- (a) Any burial association secretary or secretary-treasurer who fails to maintain records to the minimum standards required by the Burial Association Board shall be removed by the board from office and another elected by the association in his or her stead.
- (b) The election shall be immediately upon notice of the removal.

**23-78-120. Semiannual reports.**

- (a) Each burial association or society licensed in this state shall file a semiannual report showing the actual financial condition of the association as of June 30 and December 31 of each year on forms provided by the Burial Association Board.
- (b) The report is due as of June 30 and December 31 of each year and shall be filed within thirty (30) days from the date upon which it is due.
- (c) The board shall recover costs incurred in conducting audits and preparing the semiannual report from those associations which fail to file the report prior to the expiration of the aforementioned deadline. Costs to be recouped shall include:
  - (1) Round-trip mileage from the board's office to the association, at the rate then prevailing for other state employees engaged in travel;
  - (2) Per diem expenses at the rate then prevailing for other state employees engaged in travel;
  - (3) Plus a two hundred fifty dollars (\$250) fee for preparing the report.

**23-78-121. Rules and regulations.**

The Burial Association Board shall make and promulgate reasonable rules and



regulations for the administration of the provisions of this chapter and for the purpose of carrying out the intent hereof. The rules and regulations shall have full force and effect of statute.

**23-78-122. Disposition of collections.**

- (a)(1) Seventy-five percent (75%) of the collections of any burial association or society shall be solely for the payment of benefits provided by membership certificates and shall not be used for the payment of operating expenses. The annual license fee shall not be considered an operating expense, and the annual license fee may be paid from the mortuary fund.
- (2) However, subject to the reserve requirements established by the Burial Association Board, the association or society may invest any portion of the seventy-five percent (75%) of the collections not needed for the immediate payment of benefits or not needed for the reasonably anticipated payment of benefits in:
  - (A) United States Treasury bonds, direct or indirect obligations of the federal government;
  - (B) Bonds, notes, debentures, or other obligations issued by an agency of the United States government, the principal and interest of which are fully guaranteed by the United States government, and mortgages on real estate which are fully guaranteed as to principal and interest by the United States government or agency thereof;
  - (C) Preferred stocks of corporations created or existing under the laws of the United States or any state thereof. However, the funds shall be invested only in preferred stocks designated as "A" rated or the equivalent by one (1) or more nationally recognized investment services, and approved by the board. Further, no more than fifteen percent (15%) of the total funds of any burial association or society available for investment shall be invested in preferred stocks;
  - (D) Certificates of deposit of any state or national bank in Arkansas which are insured by the Federal Deposit Insurance Corporation. However, if the certificates of deposit issued by the bank shall exceed the amount of the certificates of deposit insured by the Federal Deposit Insurance Corporation, the bank shall furnish to the association or secretary and the board or the executive secretary of the board evidence of the assignment of bonds or other securities issued by the State of Arkansas or the United States of America to secure the payment of the certificates. This may be done by making the assignment through a federal reserve bank or through a correspondent bank. In the alternative, the issuing bank may make such assignment in such other form or manner as may be approved by the board or executive secretary of the board;
  - (E) Savings accounts of any savings and loan association which are insured by the Federal Savings and Loan Insurance Corporation. However, if the savings account of the association exceeds the amount of the savings account insured by the Federal Savings and Loan Insurance Corporation, the association shall

furnish to the depositing burial association or secretary and the board or the executive secretary of the board evidence of the assignment of bonds, or other securities issued by the State of Arkansas or the United States of America, to secure payment of the accounts. The savings and loan association in which the accounts exist shall make the assignment in a form and manner approved by the board or executive secretary of the board;

- (F) "A" rated or better corporate bonds, as designated by one (1) or more nationally recognized investment services;
  - (G) "A" rated state and municipal bonds as designated by one (1) or more nationally recognized investment services. However, the bonds must be issued by governmental entities in the State of Arkansas, and no more than thirty percent (30%) of the total funds of any burial association or society available for investment shall be invested in state or municipal bonds.
- (b) Seventy-five percent (75%) of the interest derived from the investments shall also not be usable for the payment of operating expenses.

**23-78-123. Disposition of fees and charges.**

- (a) All fees and charges collected by the Burial Association Board under the provisions of this chapter shall be deposited in insured banks in a fund to be known as the Burial Association Board Fund. The board is empowered to expend the funds for the requirements, purposes, and expenses of the board under the provisions of this chapter, upon a voucher signed by the executive secretary of the board, provided the total expense for every purpose incurred shall not exceed the total fees and charges collected by the board under the provisions of this chapter.
- (b) The operation of the board and the carrying out of the functions set out in this chapter shall be at no expense to the State of Arkansas.

**23-78-124. Revocation of certificate, license, charter, etc. - Hearing.**

- (a) The Burial Association Board shall, before revoking any certificate of authority or license granted under the provisions of this chapter or any charter or other authority granted to a burial association under any law effective prior to February 18, 1953, set the matter down for a hearing.
- (b) At least twenty (20) days prior to the date set for the hearing, the board shall notify in writing the burial association or person holding a license of any charges made.
- (c) The board shall afford the burial association or person an opportunity to be heard, at which hearing the association or person may be represented by counsel and shall be allowed oral testimony, affidavits, or depositions in reference thereto.
- (d)(1) The board shall have power to subpoena and bring before it any person in this state or take the testimony by deposition of any person with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in courts of this state in civil cases. The fees and mileage shall be paid by the party at whose request the witness is subpoenaed.
- (2) The board shall also have the power to order the production of any books, records, and documents at the hearing.
- (e)(1) If the board determines that the burial association or person is guilty of violation

of any provisions of this chapter, its or his certificate of authority, charter, license, or other authority shall be revoked.

- (2) However, if the burial association or person gives notice of appeal from any adverse decision of the board as set forth in § 23-78-125, then the burial association or person may, at the discretion of the board, continue to operate during the pendency of the appeal.
- (3) If the board chooses not to permit the association or person to operate during the pendency of the appeal, then the board shall appoint a person to conduct the business of the association or person until the appeal has been heard.

**23-78-125. Revocation of certificate, license, charter, etc. - Appeal.**

- (a) Upon the revocation of any certificate of authority, charter, or other authority by the Burial Association Board under any of the provisions of this chapter, the association or person whose certificate of authority, charter, license, or other authority has been revoked shall have the right of appeal from the action of the board revoking the certificate of authority, charter, or other authority to the circuit court of the county in which the burial association may be located.
- (b) Appeals shall be made in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (c) Upon receipt of a notice of appeal, the board shall file with the clerk of the circuit court the decision of the board. The clerk of the circuit court shall then transfer the appeal to the civil docket as in cases of appeal from a justice of the peace.
- (d) The appeal shall be heard de novo by the court without a jury.
- (e) Either party shall have the right of appeal to the Supreme Court of the State of Arkansas.